

REMARKS

All of the claims pending in this application have been rejected under Section 102(e) as being anticipated by U.S. Patent 6,710,006 which is said to teach a process for oligomerizing ethylene and an alpha olefin using the ligands of the present invention (column 7, line 29 through column 8, line 25). The Examiner's rejection is respectfully traversed.

The present application claims a priority to European Patent Application 00308728.5, filed October 3, 2000. The filing date of this European Application is prior to the U.S. filing date of the cited reference, February 1, 2001. The Examiner has previously indicated that a certified copy of this European patent application has been received as has the claim to priority.

The 2000 European Patent Application to which the present application claims priority contains a description of a process for making the ethylene and other alpha olefin co-oligomerized products. The Examiner's attention is directed to page 20, line 12, through page 22, line 27. This description of the co-oligomerization process is essentially the same as the process description provided in the reference which is relied upon by the Examiner. Both descriptions describe the production of higher linear alpha olefins and/or alkyl branched alpha olefins having a chain length of from 4 to 100 carbon atoms and under an ethylene pressure of from about 0.1 MPa to about 1.6 MPa and a temperature of from about -100°C to about 300°C.

Claim 1 of the present application contains a term which does not appear in the 2000 European Application. That is the reference to a "substituted aromatic hydrocarbon ring being π -coordinated to the metal" but the cited reference does not contain that term either.

The 2000 European Patent Application from which the present application claims priority contains several examples of iron coordination complexes--Examples 1 to 7 on pages 41-47 (utilizing iron complex 3 on pages 27-28), Examples 9 and 10 on pages 47-48 (utilizing iron complex 5 on page 29), Example 11 on page 48 (utilizing iron complex 8 on page 32), Example 12 on page 48 (using iron complex 11 on pages 34 and 35), Example 13 on page 49 (utilizing iron complex 13 on page 36), and Example 14 on page 49 (utilizing iron complex 15 on pages 37 and 38).

Very similar experiments 1 through 7 are carried out in the reference (column 15, line 52-column 17, line 37) with the same iron complex 3 (column 10, lines 7-37). Complex 5 of the reference (column 11, lines 6-30) appears to be the same as complex 15 of the 2000 European patent application (page 37, line 16-page 38, line 8). The same Examples 1-7 (pages 52-56) appear in the present application utilizing the same iron complex 3 (page 33, line 20-page 34, line 12). Also, complex 15 in the present application (page 42, line 21-page 43, line 13) is the same as complex 5 shown in the reference.

The Applicants assert that they are entitled to claim priority to the 2000 European patent application for all of the process description which is relevant to the issue of whether or not U.S. 6,710,006 anticipates the present invention. The present application and its earliest priority application contain all of the information concerning the co-oligomerization process which is presented in the cited reference. Therefore, the Applicants assert that the cited reference is not a reference against this application since it was filed in the United States after the European filing date of the priority application.

Section 2136.01 of the Manual of Patent Examining Procedure states on page 2100-96 that the Section 102(e) applicable in this case is the following:

"(e) The invention was described in a patent granted on an application for patent filed by another in the United States before the invention thereof by the Applicant for patent or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of Section 371(c) of this title before the invention thereof by the Applicant for patent."

The Applicants wish to point out that the highlighted portion of the subsection above does not apply in this case because the cited reference was based upon a European patent application and not a PCT patent application (which is the definition of "international application" provided in the statute). Section 2136.03 of the Manual of Patent Examining Procedure states:

"35 U.S.C. 102(e) is explicitly limited to certain references "filed in the United States before the invention thereof by the Applicant" (emphasis added). Foreign applications' filing dates that are claimed (via 35 U.S.C. 119(a)-(b), (f) or 365(a)) in applications, which have been published as U.S. or WIPO application publications or patented in the U.S., may not be used as 35 U.S.C. 102(e) dates for prior art purposes."

Thus, the Applicants assert that the cited reference, U.S. 6,710,006, is not a reference with respect the present application.

The Applicants request withdrawal of this rejection and issuance of an early notice of allowance.

Respectfully submitted,

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